

Title: Cumulative Legal Aid Reforms IA No: Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	Date: 05/09/2013
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: James Narey
Summary: Intervention and Options	RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£m	£m	£m	Yes/No In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

In a drive to reduce public spending to aid reduction of the fiscal deficit, the Government took steps in 2010 to reform the legal aid system in England and Wales to achieve savings. Since then, Government has continued to review expenditure in this area to ensure value for money is achieved in delivering the service required. However, against a backdrop of continuing pressure on public finances, there is a need to continue to bear down on the cost of legal aid, to ensure that we are getting the best deal for the taxpayer, and that the system commands the confidence of the public. To make such changes, Government intervention is necessary as it is responsible for the terms of access to legal services funded by the legal aid budget and setting remuneration rates.

What are the policy objectives and the intended effects?

To ensure that legal aid expenditure represents value for money and is targeted at those cases which justify it.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The following option, in addition to 'do nothing' has been assessed against the base case of 'no change':

Option 1: Implement the following policies:

- i) **Scope changes for prison law matters:** restricting the circumstances in which legal aid is available to prisoners.
- ii) **Introducing a financial eligibility threshold in the Crown Court:** in order for legal aid not to be available to defendants who are wealthy enough to fund themselves.
- iii) **A 30% reduction in fees for Very High Cost Cases (Crime) (VHCCs)** in the Crown Court.
- iv) **Restrict the use of 2 advocates** in the Crown Court to only cases where it is absolutely necessary.
- v) **Introduction of a residence test** for eligibility to civil legal aid;
- vi) **Merits test:** remove the current provisions which allow certain cases with borderline prospects of success to be funded;
- vii) **Public Family Law:** reduce the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme;
- viii) **Civil (non-family) advocacy fees:** harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings;
- ix) **Immigration and Asylum upper tribunal:** remove the uplift in the rate paid for immigration and asylum upper tribunal cases;
- x) **Expert fees:** reduce expert fees in civil, family and criminal proceedings, with certain exceptions.

Option 2: In addition to implementing the policies above, give consideration to the options which are having further consultation:

- xi) **Introducing competition in the procurement of criminal defence services**
- xii) **Restructuring the Advocate's Graduated Fee Scheme (AGFS)**

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:	Non-traded:	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:  Date: 05/09/2013

Summary: Analysis & Evidence

Policy Option 1

Description: Implement all legal aid reforms which have been agreed

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£80m	

Description and scale of key monetised costs by 'main affected groups'

Legal aid providers: In aggregate would no longer receive an estimated £70m worth of funding from the legal aid budget per year as a result of reductions in remuneration. They may also see a reduced demand for their services as a result of the proposed reductions in scope of legal aid.

Legal aid clients: we estimate approximately 11,000 clients would no longer receive legal aid funding to the value of £8m if affected by the changes to prison law scope, the financial eligibility threshold, the residence test, or for cases judged to have a 'borderline' prospect of success.

LAA: there will be a cost to administering the residence test The LAA estimate this additional cost to be less than £1m per annum.

Other key non-monetised costs by 'main affected groups'

LAA administration: may experience a small one-off increase in administration costs from the changes to cover any amendments to financial systems and training.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£80m	

Description and scale of key monetised benefits by 'main affected groups'

Legal aid fund: In aggregate the package would save the legal aid fund an estimated £80m per year once full steady-state savings have been realised.

Other key non-monetised benefits by 'main affected groups'

Wider economic benefits: the reforms would contribute to reducing the Government's fiscal deficit.

Key assumptions/sensitivities/risks

- The market for legal aid provision can absorb the reduction in provider revenue and that there are no other changes in provider behaviour.
- Legal aid claimants are assumed to continue to achieve the same case outcomes from non-legally aided means of resolution.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Implement all legal aid reforms which have been agreed, plus those being consulted on

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£220m	

Description and scale of key monetised costs by 'main affected groups'

Legal aid providers: In aggregate would no longer receive an estimated £210m worth of funding from the legal aid budget per year due to reductions in remuneration. They may also see a reduced demand for their services as a result of the proposed reductions in scope of legal aid.

Legal aid clients: we estimate approximately 11,000 clients would no longer receive legal aid funding to the value of £8m if affected by the changes to prison law scope, the financial eligibility threshold, the residence test, or for cases judged to have a 'borderline' prospect of success.

LAA: there will be a cost to administering the residence test The LAA estimate this additional cost to be less than £1m per annum.

Other key non-monetised costs by 'main affected groups'

LAA administration: may experience a small one-off increase in administration costs from the changes to cover any amendments to financial systems and training

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£220m	

Description and scale of key monetised benefits by 'main affected groups'

Legal aid fund: In aggregate the package would save the legal aid fund an estimated £220m per year once full steady-state savings have been realised.

Other key non-monetised benefits by 'main affected groups'

Wider economic benefits: the reforms would contribute to reducing the Government's fiscal deficit.

Key assumptions/sensitivities/risks

- The market for legal aid provisions can absorb the reduction in provider revenue and that there are no other changes in provider behaviour.
- Legal aid claimants are assumed to continue to achieve the same case outcomes from non-legally aided means of resolution.

Discount rate (%)

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Evidence Base (for summary sheets)

Introduction

Background

1. This Impact Assessment (IA) accompanies the Ministry of Justice's (MoJ's) consultation on "Transforming Legal Aid: next steps". The associated consultation document was published on 5 September 2013 and can be found at: www.justice.gov.uk
2. The legal aid scheme involves the public procurement of legal services and determines the terms and conditions of access to these services. Expenditure accrued to the legal aid fund was just over £1.9bn in 2012/13. This represented around 25% of the MoJ's net resource budget. Approximately £975m was spent on criminal legal aid, with the remaining £940m spent on civil legal aid¹. The Legal Aid Agency (LAA) is responsible for administering the legal aid scheme in England and Wales.
3. The Government is proposing a number of changes to bear down on the cost of legal aid to ensure that we are getting the best deal for the taxpayer and expenditure is targeted at those people and cases which justify it. The individual options are considered in six separate impact assessments covering the changes to the civil and criminal fees; the changes to civil and criminal scope, merits and eligibility; and the proposed changes to crime competition and the restructure of the AGFS which are being consulted on. This Impact Assessment provides a cumulative assessment of all of the proposed changes to legal aid. The individual impact assessments are titled as follows and can be found at www.justice.gov.uk:
 - Transforming legal aid: scope, eligibility and merits (civil legal aid)
 - Transforming legal aid: reforming fees in civil legal aid and expert fees in civil, family and criminal proceedings
 - Transforming legal aid: scope, prison law and Crown Court eligibility (criminal legal aid)
 - Transforming legal aid: crime fees – response
 - Transforming legal aid: crime fees – further consultation
 - Transforming legal aid: the procurement of criminal legal aid services – further consultation

Policy objectives

4. The key objective is to bear down on the cost of legal aid to ensure that we are getting the best deal for the taxpayer and expenditure is targeted at those people and cases which justify it.

Policy

This IA considers, as a result of the response to consultation, the cumulative effect of the reforms that will now be taken forward. The following ten policies are ones in which final decisions have been made:

Crime Scope and Eligibility reforms:

a) **Scope changes for prison law matters**

This proposal entails amending the scope of criminal legal aid advice and assistance for prisoners to exclude all prison law cases that do not involve the determination of a criminal charge for the purposes of Article 6 ECHR (right to a fair trial), are not proceedings before the Parole Board where the Parole Board has power to direct release, are not sentence calculation cases, or which do not fulfil the criteria as set out in the *R v Home Sec ex parte Tarrant* case.

b) **Introducing a financial eligibility threshold in the Crown Court**

The proposal is to introduce a financial eligibility threshold for access to legal aid in the Crown Court of £37,500 annual disposable household income, to be assessed by the LAA. This will include a hardship provision to ensure access to legal aid to ensure compliance with Article 6 ECHR for those who exceed the threshold but demonstrate that they cannot in fact afford to pay for their defence. We will reimburse acquitted Crown Court defendants from Central Funds at legal aid rates in line with the position in the magistrates' courts.

Crime Fee reforms:

c) **A 30% reduction in fees for VHCCs**, for litigators and advocates in both new and existing cases. Pre-panel cases will be exempt from this reduction.

d) **Restrict the use of 2 advocates in criminal cases**

This proposal tightens the current criteria which inform the decision by judges to allow the instruction of two (and exceptionally three) advocates and takes steps to ensure that they are applied more consistently and robustly in all cases.

Civil Eligibility and Merits reforms:

e) **Introduction of a lawful residence test:**

This will introduce a residency test based on lawful residence in the UK, Crown Dependencies or British Overseas Territories at the time an application for civil legal aid is made and a period of 12 months lawful residence which can have been at any time in the past.

f) **Amendments to the merits criteria to remove civil legal aid for cases that are assessed as having “borderline” prospects of success.**

This will amend the merits criteria to remove civil legal aid for cases that are assessed as having “borderline” prospects of success.

Civil Fee Reforms:

g) **Reduce the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme**

This will implement a 10% reduction in the current representation fees paid to solicitors in public law family cases². The 10% reduction will also apply to the hourly rates applicable where the case reaches the escape threshold of the fixed fee regime³.

h) **Harmonise fees paid to self-employed barristers with those paid to other advocates appearing in civil (non-family) proceedings**

This will harmonise remuneration to self-employed barristers⁴ in civil (non-family) proceedings in the County Court, Upper Tribunal and High Court on the same basis as other advocates.

² The Civil Legal Aid (Remuneration) Regulations 2013 (Schedule 1, Part 1, Table 2(c))

³ The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 1, Part 3, Table 9(a)

⁴ A self-employed barrister here means an individual under the rank of Queen's Counsel.

Self-employed barristers would, as other advocates, be eligible to receive a discretionary enhancement of that fee subject to specific criteria being complied with.

i) **Remove the uplift in the rate paid for immigration and asylum Upper Tribunal cases**
This will remove the 35% uplift in the rate paid for immigration and asylum Upper Tribunal appeal cases (where permission to appeal is granted).

j) **Reduce experts fees in civil, family and criminal proceedings**
This will reduce fees across all expert types in civil, family and criminal cases by 20%⁵ with the exception of:

- o Neurologists, Neuroradiologists and Neonatologists in clinical negligence (cerebral palsy) cases where the higher rates recently set out in guidance to the LAA will be codified;
- o Surveyors in housing disrepair cases where the higher rates codified in the Civil Legal Aid Remuneration Regulations 2013 will be retained; and
- o Interpreters, where the:
 - (a) current rates payable to interpreters inside London will be retained; and
 - (b) the rates payable to interpreters outside London will be reduced by 12.5%.

5. The following two policies we are further consulting on:

a) **Introducing competition in the procurement of criminal defence services**

We are consulting on a revised model of competition, whereby any provider meeting a certain quality threshold will have access to Own Client Work. The number of contracts for Own Client Work is therefore unlimited. Currently, Own Client Work accounts for over 60% of police station work where an arrested individual seeks legal advice. We are proposing to compete the Duty Provider Work and to limit the number of contracts available for this work. We will commission independent research jointly with The Law Society during the consultation to help work out the appropriate number of contacts to offer for Duty Provider Work.

b) **Restructuring the AGFS**

We are consulting on two options for criminal advocacy fees. The first involves a harmonisation of basic fees for guilty pleas and cracked trials at a rate in between their current payment rates. Under this option, the basic fees for trials will be left unchanged, but daily attendance fees (DAFs) will be lowered and tapered as each subsequent day is paid. This option has a floor below which DAFs will not fall (which is the same as the lowest rates currently). The second option is based on a proposal put forward by the Bar Council, whereby fixed fees replace the current basic fees and pages of prosecution evidence (PPE) uplift. There is a “standard” fixed fee which covers 95% of cases (based on PPE) and an “enhanced” fixed fee which covers the most complex 5% of cases. Fees are harmonised across offence groups for QCs and leading/led juniors where multiple counsel are instructed. DAFs would be paid on the same basis as the current AGFS. We have adjusted the rates proposed by the Bar Council to ensure similar levels of savings are made as in the first option.

Main affected groups

6. The following key groups are likely to be affected by the reforms:

⁵ The Civil Legal Aid (Remuneration) Regulations 2013, Schedule 5 (for civil and family expert fee rates) and The Criminal Legal Aid (Remuneration) Regulations 2013, Schedule 5 (Regulation 16)

- Legal aid service providers - legal firms contracted with the LAA for publicly funded work, advocates conducting legal representation for clients, and expert witness services.
- The LAA – who are responsible for administering the legal aid scheme.
- Legal aid claimants.
- Prisoners
- HMCTS.

Costs and Benefits

7. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in the UK, with the aim of understanding what the overall impact on society might be from implementing these policies.
8. This IA considers the impact of each policy when implemented together as a package, as opposed to in isolation. Separate IAs have been produced which examine each policy in isolation and these should be consulted for more detail on the impact of the individual policies.

Methodology and Assumptions

9. The following key assumptions have been made in the estimation of the costs and benefits:
 - (a) The supply of services from providers (solicitors, barristers and experts) is sufficient to meet demand at new fee rates.
 - (b) Providers (solicitors, barristers and experts) are assumed to supply the same quality of service to legal aid.
 - (c) We assume individuals who no longer receive legal aid will now adopt a range of approaches to resolve issues. They may choose to represent themselves in court, seek to resolve issues by themselves, pay privately for services or decide not to tackle the issue at all. We assume that the outcomes for these individuals remain unchanged and that the resources used in non-legally aided dispute resolution are the same as the resources currently used..
10. The legal aid reforms we are proceeding with have been modelled against a flat baseline of 2011/12 closed cases and costs, adjusted for reforms announced in the past but yet to be fully reflected in the data. Given data trends are relatively stable in the short-term, and to ensure consistency and easy comparability with the original consultation, we have not updated our assessment of the impacts of these policies for 2012/13 data. For policies where we are undertaking further consultation, we have used the most recent data available.
11. All savings figures have been rounded to the nearest £1m for estimates below £10m, to the nearest £5m for estimates above £10m and to the nearest £10m for estimates over £100m. All volume changes have been rounded to the nearest 100 cases below 10,000 volumes and to the nearest 1,000 above 10,000.
12. All savings to the Legal Aid Fund quoted are inclusive of VAT. In practice, HM Treasury would ultimately bear some of the cost of a reduction in legal aid spending through reduced tax revenue rather than providers.

Option 0: Do Nothing

Description

13. The “do nothing” option is the base case. This in effect would mean that the current remuneration rates would continue to operate as now and legal aid funding would apply to the same cases as at present.
14. As this option is compared against itself, its costs and benefits are zero, as is its Net Present Value (NPV).

Option 1: Implement the legal aid policies on which final decisions have been taken

Description

15. All legal aid policies in this package are summarised above. The analysis assumes all of these policies will be implemented.
16. The monetised impacts of the set of policies in Option 1 are calculated on a cumulative basis, with detailed breakdowns of the individual policies outlined in the individual Impact Assessments.

Option 1: Costs

Net costs to legal aid providers

17. Reforms to remuneration will reduce the amount of money that is spent on legal aid and will therefore have direct costs to legal aid providers (although it is not possible to quantify the effect in relation to the residency test proposal). The cumulative impact of the options is considered in Table 1.
18. Table 1 gives the annual estimated cost to providers from each of the options and their cumulative impact, which is £70 million per annum in steady-state.

Table 1: Cumulative impact of agreed LAT changes to legal aid: £millions

	Cost of individual option
Crime fee reductions:	
VHCC reduction	20
Single advocate	10
Civil fee reductions:	
Barrister fees in civil cases	3
Solicitors in public law family care proceedings	20
Immigration and asylum upper tribunal uplift	1
Expert's fees	20
Total⁶	70

19. The cumulative cost to providers from the options equates to the sum of the individual options as there is no overlap between the options that deliver the most substantial savings:
 - reducing the fees paid in VHCCs,
 - restricting the use of two counsel in criminal cases,
 - harmonising advocate rates in civil non-family cases,
 - reducing the fixed representation fees paid to solicitors in public law family care proceedings by 10%, and

⁶ Numbers do not sum due to rounding.

- reducing fees paid to experts by 20%.
20. It is likely that there will be some overlap between the civil merits and eligibility reforms and the cuts to civil fees particularly where individuals no longer receive funding for borderline cases, or no longer qualify for legal aid as a result of the residence test. This could reduce the savings anticipated from the reduction in civil fees. However, the low volume of cases affected by the civil merits and eligibility reforms mean that these overlaps are not expected to alter the cumulative assessment of the costs to providers.
 21. Similarly, on the criminal side it is possible that there could be some overlap between the introduction of an eligibility threshold in the Crown Court and the crime fee reductions. However, as this overlap is not expected to be large, this is not expected to significantly alter the cumulative impact of the reforms.
 22. Legal aid providers are also expected to face a fall in demand for their services as a result of the changes to prison law scope, the financial eligibility threshold, the residence test, and changes for cases judged to have a 'borderline' prospect of success. However, the precise impact on providers is dependent upon the behavioural response of clients.

Legal aid claimants

23. Legal aid claimants will be impacted by the criminal and civil scope, eligibility and merits reforms since these restrict access to legal aid in certain situations. Table 2 sets out the number of cases, and thus the number of claimants, expected to be ineligible to receive legal aid funding as a result of these changes, as well as the estimated reduction in legal aid spending on these cases.
24. Table 2 shows that the largest group affected by these changes is prisoners. It is estimated that around 11,000 prisoners will no longer receive legal aid as a result of the changes to provision of legal aid for prison law matters. The other changes are expected to impact on very few cases and therefore individuals. The introduction of an eligibility threshold in the Crown Court is expected to impact around 200 individuals per annum, while the change to the civil merits test is expected to affect around 100 individuals per annum.
25. It is unknown how many claimants will be ineligible to receive civil legal aid as a result of the residence test since the LAA does not currently consider residence when assessing applications.

Table 2: Cumulative impact on legal aid claimants

	Number of cases impacted	Reduction in legal aid funding (£million)
Criminal scope reforms:		
Prison law scope	11,000	4
Criminal eligibility threshold (Crown Court)	200	3
Civil reforms:		
Residence Test	n/a	n/a
Merits Test	100	1
Total⁷	11,000	8

26. The total estimated reduction in spending on legal aid claimants is £8m per annum in steady state.
27. The reductions in criminal and civil fees are not expected to adversely impact on individuals, since it is assumed that individuals will receive the same quality of legal advice as they would at present.

⁷ Numbers do not sum due to rounding.

The ability of the provider market to absorb the cuts and continue to provide legal advice of the same quality to those who need it is considered in the 'risks and uncertainties' section below.

LAA Administration costs

28. The one-off costs from the reforms are expected to be negligible. Costs in the main will be one-off costs relating primarily to amending IT systems to take account of the new arrangements.
29. The introduction of the residence test is expected to lead to small ongoing costs to the LAA. The LAA estimate this additional cost to be less than £1m per annum.

Option 1: Benefits

Legal Aid Fund

30. Tables 1 and 2 (above) shows that together the reforms to legal aid are expected to reduce legal aid spending by approximately £80 million in steady-state. This is a direct saving to the legal aid fund.

Wider benefits

31. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government's macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Risks and Uncertainties

Sustainability

32. The package of proposals is designed to mitigate against any risk that the legal aid market may not be able to sustain the cumulative impact of the cuts to legal aid fees.
33. The separate Impact Assessments covering the changes to criminal and civil fee reductions looked at the issue of sustainability, but did not consider the cumulative impact of the proposed reforms to civil and criminal legal aid, or the sustainability of the provider market given that some providers undertake both family and criminal legal aid. According to the LAA's core dataset for 2011/12, approximately 20% of firms are involved in family or civil non-family and criminal legal aid work. In value terms, this accounts for approximately 40% in terms of the legal aid value paid to solicitors. Note that the full effect of the LASPO scope reforms - which will also have had an effect on providers - has not been captured in this base data, and may also have an effect on the sustainability of the provider market as a whole.
34. While the actual impact will depend upon both the case mix and reaction of individual providers, the assumption is that most firms structure their business to address risks, including market fluctuations, and will seek to address this gap by other means to retain a viable business. Given that public family law spending currently represents around 40% of the civil legal aid budget and that this is expected to rise to around 55% by 2016/17, partly as a result of an anticipated increase in work, this is one area which could alleviate risks of other changes resulting from these reforms.
35. The only firm indication of how the market has reacted to previous reforms is the outcome of the 2013 civil legal aid tender process for contracts (which reflect the LASPO scope reforms). While the outcome of this tender process indicated a very small reduction in the actual number of contracted firms bidding for contracts, there was an increase in the number of offices from which those firms planned to deliver family services (see Annex D). Given that this market reaction was

in the light of the significant reductions in publicly funded family work under LASPO, this could arguably indicate that there currently remains a strong appetite amongst providers to do legal aid work and that overall the market should be able to meet the future levels of expected demand at current prices.

Quality of Advice

36. There is no evidence to suggest a drop in the quality of legal advice provided, particularly given the integrity and professionalism of solicitors and advocates, and that we are putting quality at the heart of the selection criteria. We therefore think it is unlikely that any risk of a reduction in quality will materialise. In addition, standards will continue to be monitored by the regulatory authorities to ensure levels of quality are maintained.

Impact on public bodies

37. The overall impact of the package of the reforms on the administration costs of the LAA is uncertain. If there is a fall in legal aid applications as a result of the prison law changes, crown court eligibility threshold, residency test and the change to the merits test then the LAA might see some savings. However, there is also the potential for additional costs if there is an increase in appeals to the Independent Funding Adjudicator concerning merits decisions (this is relevant to the "borderline" proposal only).
38. The reduction in the number of legal aid funded cases should lead to a small reduction in the number of cases coming before the courts. In the short and medium term the resources freed up may be used to address backlogs elsewhere in the court system rather than being realised as cashable savings. HMCTS operates on a full cost recovery basis over the longer term and any reduction in costs would be associated with a reduction in fee income.
39. HMCTS may, however, experience an increase in individuals choosing to represent themselves in court. The overall impact on HMCTS is therefore expected to be cost neutral since the net impact on resources is uncertain, and in the long term HMCTS will operate on a cost recovery basis.
40. There may be a risk that the introduction of a residence test could lead to an increase in the volume of applications for asylum as this could be the only route to claiming legal aid for some applicants. However, we consider this risk is low as it is unlikely that illegal over-stayers would wish to bring themselves to the attention of the authorities in this way.

Behavioural response

41. Individuals who are no longer eligible for civil legal aid to fund their claim may choose to respond in a number of ways. They may represent themselves in court, seek to resolve issues outside of the court system, pay for private representation or choose not to tackle the issue at all. Those no longer eligible for criminal legal aid in the Crown Court will either pay for private representation or choose to represent themselves.

Option 2: Implement Option 1, plus the options for further consultation:

Description

42. All legal aid policies in this package are summarised above. The analysis assumes all of these policies will be implemented.
43. The monetised impacts of the set of policies in Option 2 are calculated on a cumulative basis, with detailed breakdowns of the individual policies outlined in the individual Impact Assessments.

Option 2: Costs

Net costs to legal aid providers

44. Table 3 gives the annual estimated cost to providers from the options for further consultation, and the cumulative impact when combined with the policies considered in option 1. As there is no overlap between options in addition to the overlaps considered in option 1, the cumulative impact is equivalent to the sum of the savings from the individual options, £210 million per annum in steady-state. These cumulative savings represent the total reduction in remuneration to providers in steady-state, once all of the reforms to legal aid have been fully implemented.

Table 3: Cumulative impact of LAT changes to legal aid: £millions

	Cost of individual option
Proposals in Option 1	70
<i>Additional proposals in option 2:</i>	
Crime Competition	120
Advocacy Fees	15
Total	210

Legal aid claimants

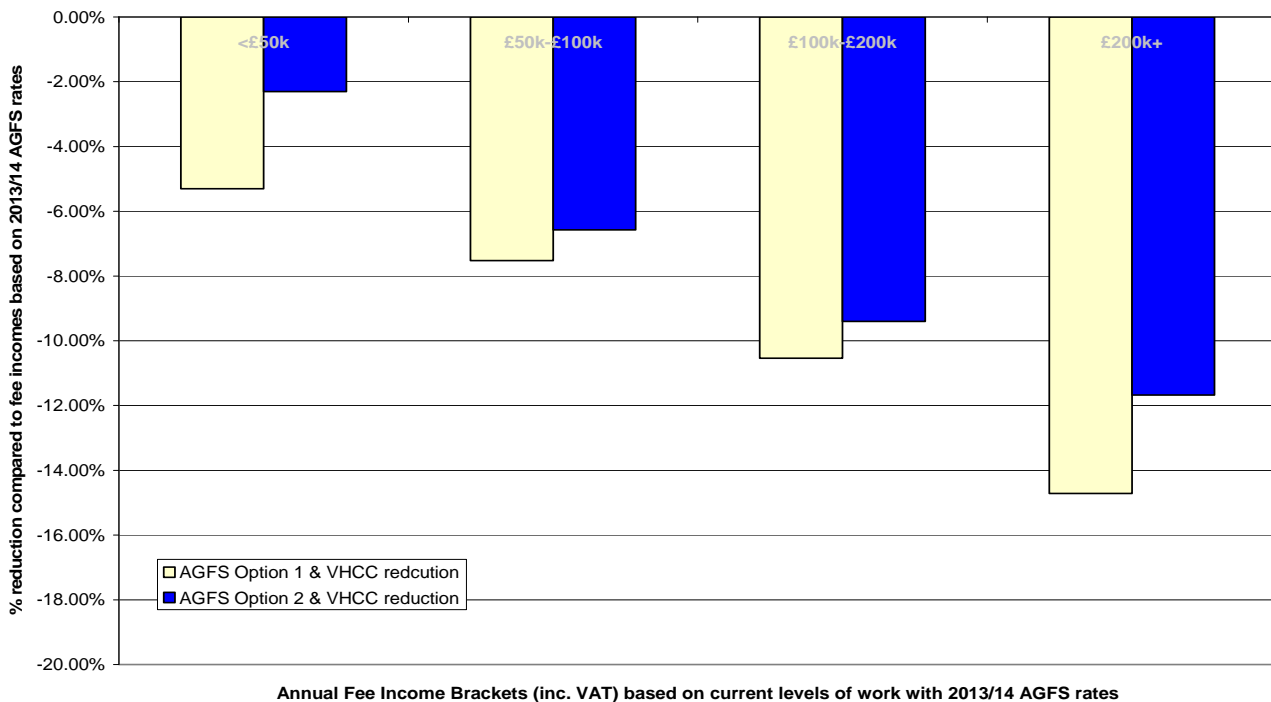
45. The options which are being consulted on: crime competition and advocacy fees, will not affect legal aid claimants directly. The number of legal aid claimants affected is therefore 11,000 - unchanged from the number affected in option 1. The reduction in legal aid spending on claimants is also the same as in option 1 - £8m per annum in steady state.
46. The reductions in advocacy fees and the introduction of competition into the criminal legal aid market are not expected to adversely impact on individuals, since it is assumed that individuals will receive the same quality of legal advice as they would at present. The ability of the provider market to absorb the cuts and continue to provide legal advice of the same quality to those who need it is considered in the 'risks and uncertainties' section below.

Criminal Legal Aid advocates

47. The impact on an individual advocate will depend on the mix of cases they undertake. Advocates undertaking only VHCCs will see reductions of 30%. On the AGFS side, the restriction of two advocates and the changes to the structure of the AGFS result in respective 5% and 7% reductions on forecast AGFS spend in the steady state. When taking the reductions overall as a package, there will be 14% reduction on forecast AGFS and advocacy VHCC spend in the steady state
48. The combined distributional impact on barristers of undertaking each of the two AGFS options, on top of the VHCC reduction, is shown in the chart below. We assess the relative distributional impacts of the AGFS and VHCC proposals assuming that the amount and distribution of work remains at 2012-13 levels, (i.e. we do not incorporate the impact of restricting two advocates in the baseline)⁸. This is because we have very little way of knowing which cases would be changed to a single barrister, and for those that do, we could not be sure which barrister would remain on the case. **The analysis below is indicative only, as it has the strong assumption that current levels and case mix of work remain the same (i.e. there are no behavioural responses). It also excludes solicitor advocates, as they bill as firms rather than as individuals.**

⁸ See Impact Assessment relating to the restriction of 2 counsel and the 30% reduction to Very High Cost Cases (VHCCs).

Chart 1: Cumulative Distributional Impact on Annual Fee Income (inc VAT) of Criminal Barristers from proposed AGFS options and VHCC reductions



49. There are two key impacts to note. First, option 1 reduces the fee income of barristers more than option 2. This is because a significant proportion of barristers work consists of cracked cases and trials, both of which see sharper reductions under option 1. The tables below use LAA data on all cases in 2012/13 to show (a) the proportion of different case types undertaken by barristers compared with solicitor advocates, and, (b) the fee reduction of each option, split by case type.

Table 3: Proportion of fee income of all advocates in 2012/13, split by case type, based on 2012/13 LAA billing data⁹

	Guilty	Cracked	Trials
Barristers	38%	32%	30%
Solicitor Adv.	54%	26%	20%

Table 4: Reduction in fees under each option, split by case type, based on 2012/13 LAA billing data¹⁰

	Guilty	Crack	Trial
Option 1	+23%	-18%	-11%
Option 2	-11%	-2%	-8%

50. Secondly, the analysis shows that both options have a greater impact on those in receipt of high fee income from criminal legal aid. When comparing the options, option 1 tends to hit those with the higher fee incomes harder than option 2. This is generally because those with higher fee incomes tend to do the longer, more complex trials, which see greater reductions in fees paid under option

⁹ This has been derived taking all AGFS bills in 2012/13 and creating a baseline expenditure after applying the 2013/14 rates. It shows the value of worked billed for barristers and solicitor advocates (e.g. 54% of the total value of solicitor advocates claims were on guilty pleas).

¹⁰ This has been derived taking all AGFS bills in 2012/13 and creating a baseline expenditure after applying the 2013/14 rates. The baseline expenditure was split into guilty / cracked / trials. We have then applied the rates from options 1 and 2 onto each of the bills to generate expenditure figures for each option, split into guilty / cracked / trials. We compared the aggregate expenditure of each option against the baseline, split by guilty / cracked / trials. This table summarises the percentage differences in aggregate expenditure.

1. Option 2 also hits those with higher fee income (albeit less than option 1), again because they tend to do the more complex cases, which are now paid a fixed fee. Despite there being an “enhanced” fee for the most complex cases, these barristers are likely to lose out from undertaking complicated cases which are just under the PPE threshold. The “standard” fixed fee for these cases is likely to be less than they received under the AGFS. VHCCs tend to be undertaken by barristers with higher fee income, so the 30% reduction to VHCCs is another reason why high income barristers are more adversely affected.

51. We estimate that those receiving relatively lower fee income (under £50,000 in one year) would on average receive a decrease in annual fee income of 5% under option 1 and 2% under option 2 when taking account of changes to the AGFS and VHCC fees combined. This is not to suggest that every barrister in this bracket would be worse off, as the impact on individuals would depend on their mix of cases. The average fee income for those receiving between £50,000 and £100,000 in one year would be reduced by 8% and 7% under options 1 and 2 respectively, and for those receiving between £100,000 and £200,000 by 11% and 9%. The average fee income for those on incomes of over £200,000 in one year would be reduced by 15% and 12%, under options 1 and 2 respectively. That is not to suggest that there would not be individual barristers who might receive a higher fee income in a given year as, again, actual income depends on the number and mix of cases that they undertake.

LAA Administration costs

52. The one-off costs from the proposals are expected to be negligible. These costs in the main will be one-off costs relating primarily to amending IT systems to take account of the new arrangements.
53. The introduction of the residence test is expected to lead to small ongoing costs to the LAA. This is not expected to cost the LAA more than £1m per annum

Option 2: Benefits

Legal Aid Fund

54. Table 3 shows that together the reforms to civil legal aid are expected to reduce legal aid spending by approximately £220 million in steady-state. This is a direct saving to the legal aid fund.

Wider benefits

55. A reduction in Government spending associated with the reduction in legal aid would contribute to achieving the Government’s macroeconomic objectives, in particular contributing to the reduction of the size of the budget deficit.

Risks and Uncertainties

Sustainability

56. The package of proposals is designed to mitigate against any risk that the legal aid market may not be able to sustain the cumulative impact of the cuts to legal aid fees. The evidence on sustainability has been presented in the separate Impact Assessments, and the impact on firms undertaking both civil and criminal legal aid are considered in the ‘risks and uncertainties’ section of option 1.

Quality of Advice

57. There is no evidence to suggest a drop in the quality of legal advice provided, particularly given the integrity and professionalism of solicitors and advocates, and that we are putting quality at the heart of the selection criteria. We therefore think it is unlikely that any risk of a reduction in quality

will materialise. In addition, standards will continue to be monitored by the regulatory authorities to ensure levels of quality are maintained.

Impact on public bodies

58. The overall impact of the package of the reforms on the administration costs of the LAA is likely to be small. In addition to the impacts considered under option 1, the introduction of competition into criminal legal aid may also have some small ongoing administration costs to the LAA.
59. The impact on HMCTS is not expected to be different to that considered in option 1, since the additional proposals being consulted on should not affect HMCTS workloads.

Behavioural response

60. Individuals who are no longer eligible for civil legal aid to fund their claim may choose to respond in a number of ways. They may represent themselves in court, seek to resolve issues outside of the court system, pay for private representation or choose not to tackle the issue at all. Those no longer eligible for criminal legal aid in the Crown Court will either pay for private representation or choose to represent themselves.